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34

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/030,394	02/25/1998	GREGORY YUSCHAK	19462.118	7299

32692 7590 06/26/2003

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EXAMINER

LEWIS, AARON J

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 06/26/2003

34

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/030,394	YUSCHAK ET AL.
Examiner	Art Unit	
AARON J. LEWIS	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 May 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20,22 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20,22 and 25-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/22/2003 has been entered.

DETAILED ACTION

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 9, 10, 14, 16, 18-20, 22, 25-28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Burns et al. ('421) for the reasons set forth on pages 3-5 of the Office action dated 05/25/2001.

As to the following new recitations in each of claims 1, 22 and 25, "... without rotational movement of the filter cartridge relative to the receiving structure,..." and "...the filter cartridge being capable of being readily separated from the cartridge

Art Unit: 3761

receiving structure by pulling manually thereon without additional manual manipulation.", it is submitted that Burns et al. (col.5, lines 23-28) teach a filter cartridge (28) which is capable of being readily separated from the cartridge receiving structure (i.e. filter platform in Burns et al.). Locking tabs (29) are disclosed as being snapped into place and preventing rotation. A review of fig.4 reveals that these tabs (29) accomplish this through their resiliency. One of ordinary skill would realize that the movement of these tabs towards the center of cheek aperture (26) in combination with the manual pulling of the filter cartridge (28) away from the mask body would result in the separation of the filter cartridge from the cartridge receiving structure without any additional manual manipulation.

5. Claims 11,12,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns et al.('421) for the reasons set forth on pages 5 and 6 of the Office action dated 05/25/2001.

6. Claims 7,8,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns et al. ('421) in view of Michel et al. ('346) for the reasons set forth on pages 6 and 7 of the Office action dated 05/25/2001.

Response to Arguments

7. Applicant's arguments filed 03/24/2003 have been fully considered but they are not persuasive. Applicant's argument that Burns et al. lack an express statement that the filter cartridge can separated from the cartridge receiving structure by manually pulling on it appears to be accurate; however, a review of (col.5, lines 23-28 and fig.4) of Burns et al. would leave one of ordinary skill with no other reasonable method of

Art Unit: 3761

separating the filter cartridge from its receiving structure. While it is possible that locking tabs (29) might require movement towards the center of aperture (26) in combination with manual pulling on the cartridge (28), an act of moving locking tabs (29) towards the center of aperture (26) does not render the Burns et al. disclosure inapplicable to the claims. Claims 1, 22 and 25 are apparatus claims which define a respirator; these claims do not define a method of using a respirator nor a method of removing a filter cartridge from a filter cartridge receiving structure. The last recitation in each claim "...without additional manual manipulation." does not point out exactly what structures applicant intends to preclude from manual manipulation. Indeed, under the abovementioned scenario of moving the locking tabs inwardly and manually pulling on the filter cartridge, there is no additional manual manipulation of the filter cartridge itself required in order to separate it from its receiving structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WEILUN LO can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Application/Control Number: 09/030,394

Page 5

Art Unit: 3761



AARON J. LEWIS
Primary Examiner
Art Unit 3761

Aaron J. Lewis
June 23, 2003